IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

Criminal Jail Appeal No. 1995 of 2001 , decided on 13-11-2003

Manoj Kumar Vs. State

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date 13-11-2003 Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Jail Appeal No. 1995 of 2001

Manoj son of Bachchi Lal
R/o village Mahidhar, Naugaon
Tehsil Purola, District Uttarkashi …Appellant.

Vs.

State …Respondent.

Sri N.C.Gupta Advocate Amicus Curriae for the appellant.
Learned A.G.A. for the respondent.
Date: November 13 ,2003.

ORAL JUDGMENT: **(Per: Hon. Irshad Hussain, J.).**

Appellant Manoj has been held guilty; convicted and sentenced to undergo imprisonment for two years under section 454 I.P.C.; ten years R.I. under section 397 I.P.C. and ten years R.I. under section 376 I.P.C. per judgment and order dated 1.11.2001 passed by the Sessions Judge, Uttarkashi in Sessions Trial Nos. 1 and 17 of 1999. Both these Sessions Trials were consolidated and accused Birendra Singh of Sessions Trial No. 1/1999 has been acquitted of the charges levelled against him.

2- The case of the prosecution, briefly stated, was that the informant P.W.3, Puran Bahadun, was residing in village, Rastadi with his family consisting of his wife P.W.2, Smt. Chandrakali, daughter P.W.4 Smt. Ganga and daughter-in-law P.W.1, smt. Manju. On 26.10.1998 at about 3 or 4 p.m. informant's daugthter Smt. Ganga came running weeping and shouting, whereupon informant along with Gulab Singh, Ram Prasad and others rushed to his house. On reaching there it was found that P.W.2, Smt. Chandrakali and P.W.3 Smt. Ganga have sustained injuries. Smt. Ganga told that three persons out of whom one was a Gorkha and he was being called by his companions by the name of Manoj have trespassed in the house and caused her injuries. She had raised alarm attracting her mother Smt. Chandrakali who was working in the field and when she arrived there she was also assaulted and injuries of sharp edged weapons were caused to her also. Thereafter, P.W.1, Smt. Manju was forcibly taken by these intruders toward the forest where they tried her hands and two

of the culprits committed rape on her. These culprits also took away some moveables from the house.

3- Informant Puran Bahadur got prepared a written report (Ex.Ka.1) and gave it to circle patwari, Naugaon at 6 p.m. on 26.10.1998. Check F.I.R. (Ex.ka.9) was then prepared and G.D. entry regarding the registration of the case was accordingly made. All the three victims were sent to P.H.C. Naugaon where they were medically examined. P.W.1, Smt. Manju was also referred to District Hospital, Uttarkashi for medical examination.

4- Circle Patwari P.W.7, Chandi Prasad Semwal investigated the case. He prepared site-plan (Ex.Ka.11) and attached a box kept in the house of the informant where theft was committed vide memo (Ex.Ka.13). He also attached blood-stained pine-leaves and other grass-leaves from the place where P.W.1 Smt. Manju was subjected to gang rape, vide memo (Ex.Ka.14). Her clothes were attached vide memo (Ex.Ka.15). Attachment memo (Ex.Ka.16) pertain to a shirt belonging to one of the culprit and by which the culprits have tied the hands of Smt. Manju. After the arrest of the appellant and two others stolen properties were recovered from them. From possession of appellant ornaments were recovered on 28-10-1998 vide memo (Ex.Ka.17). On completion of the investigation charge sheet (Ex.Ka.12) was submitted against the appellant as well as two other culprits namely Birendra Singh and Vishnu Thapa. As stated above Birendra Singh has been acquitted of the charges. Vishnu Thapa had fled from the Tehri jail during the investigation.

5- The appellant pleaded not guilty and contended that he has been falsely implicated in the case.

6- In the trial prosecution examined eight witnesses. Of these, P.W.1 Smt. Manju Devi; P.W.2 Smt. Chandrakali and P.W.4 Smt. Ganga Devi supported the prosecution case by narrating the events of the day of the occurrence and the wrongful acts committed against them by the culprits including the appellant. Informant P.W.3, Puran Bahadur proved the written report (Ex.Ka.1). P.W.7, circle Patwari Chandi Prasad Semwal gave evidence in regard to the steps taken and formalities observed in the investigation of the case. P.W.8, Sri Harshmani Chamoli was Naib Tehsildar in Tehsil Badkot in the month of December 1998. In the month of December 1998 there was strike of Patwaris and further investigation of the case was entrusted to him on

1.12.1998. On completion of the investigation he submitted charge sheet (Ex.Ka.12) as stated above.

7- P.W.5, Dr. Beena Rana of District Hospital Uttarkashi medically examined Smt. Manju at 12.30 p.m. on 28.10.1998 and prepared the report (Ex.Ka.2). The following injuries were detected on the person of said victim:-

1. An abraided contusion in an area of 3cm x 2.5cm in front of right knee. Colour livid red.
2. An abraided contusion in an area of 3 cm x 3 cm in front of left keen.
3. An abraided 3 cm long and horizontally placed over dorsum of left hand, 1.5 cm below left wrist. Color dark red.

On internal examination no injury on private parts was seen. Vagina admits two fingers easily. Vaginal smear was taken and sent for pathological examination.

The Medical Officer also proved pathological report of the said victim. It is Ex.Ka.3 and as per it no spermatozoa was seen in vaginal smear.

8- P.W.6, Dr. Srikrishna Singh of P.H.C. Naugon has examined injured Smt. Chandrakali, Smt. Ganga and Smt. Manju who was however referred to District Hospital Uttarkashi, as well as the appellant and another accused. Per his evidence and injury report (Ex.Ka.4) following injuries were detected on the person of Smt. Chandrakali aged about 60 years, wife of informant Puran Bahadur:-

1- Sharp deep cutting on left temporal region measuring 11.00 cm x 2.00 cm x 2.00 cm.

2- Sharp deep cutting on middle of the left ear to left angle of the mouth 10.5cm x 2.00 cm x 2.00 cm.

3- Sharp deep cutting on middle of the left cheek measuring 8.00 cm 1.5 cm. x 1.00 cm.

4- Sharp deep cutting on left side of occipital bone in curve shape 12.00 cm. 2.00 cm x 2.00 cm.

5- Sharp deep cutting on just above injury no.4, 3.5cm x 1.00 cm x 1.00 cm.

6- Superficial cutting on right side of back 2.00 cm x .5 cm x .5 cm.

7- Sharp cutting on posterior aspect of right fore-hand 3.5 cm x 1.00 cm x .5cm.

In the opinion of the doctor injuries were caused by sharp hard weapon. X.ray was advised for injuries nos. 1 to 4.

9- Injury report of Smt. Ganga is Ex.Ka.5 and following injuries were found on her person:-

1- Sharp cutting on right eyebrow measuring 4.00 cm x 2.00 x .5cm.

2- Sharp cutting on right side frontal head 4.5cm above eye brow 2.5 cm x 1.00 cm x .5 cm.

3- Browise on right eye .300 cm. x 2.00cm x 5 cm.

In the opinion of the doctor injuries were sustained by sharp hard substance

10- The learned Sessios Judge believed the evidence of the victims of the case against the appellant Manoj and convicted and sentenced him as aforesaid.

11- I have heard the learned counsel for both the parties and have gone through the evidence on record with the help of both the learned counsel. I have also gone through the judgment of the trial court.

12- It need to be mentioned that the evidence of the three victims of the case namely P.W.1 Smt. Manju Devi, P.W.2 Smt. Chandrakali and P.W.4 Smt. Ganga reveal that on 26-10-1998 at about 1 p.m. Smt. Ganga was engaged in house hold work inside the house. Her mother Smt. Chandrakala was doing some work in the field near the house and Smt. Manju was washing the clothes at water source at a short distance from the house and the filed. Appellant Manoj along with other culprits namely Birendra Singh and Vishnu Thapa reached there at the house of the informant and they asked for some water from Smt. Ganga. When she came out of the house of serve them water she was caught hold of by Birendra Singh by her neck and pushed inside the house. Other culprits then opened the box and removed ornaments and cash amounting to Rs. 600/-. Thereafter her neck was tied by her Saree and these culprits came out of the house. After some time Smt. Ganga became conscious and came out of the house. She saw her mother P.W.2, Chandrakali lying in the field with bleeding injuries in unconscious state. She found that her sister-in-law Smt. Manju was missing. She then when to her father the informant Puran Bahadur and told all about these happenings.

13- P.W.2, Smt. Chandrakali was taken to P.H.C. Naugaon and when she regained consciousness she told that when she heard the alarm raised by her

daughter Smt. Ganga and wanted to go inside her house she was say-laid by appellant Manoj who caused her injuries on the neck and other parts of the body by Pathal, a sharp edged weapon.

14- P.W.1 Smt. Manju the third victim had her own miseries. While she was washing clothes she happened to saw the appellant assaulting her mother-in-law and as soon as she moved forward to come to rescue of her mother-in-law she was caught hold of by the appellant and forcibly taken towards the forest with the aid of other two culprits. There in the deep forest her clothes were removed and she was then raped by the appellant and another culprit. Thereafter they tied her hands with palm tree and fled from there. Somehow she managed to got free and while coming to her house she met her father-in-law and other villagers. She was then provided clothing to cover her body. She was brought to P.H.C. Naugaon and thereafter sent to District Hospital, Uttarkashi for medical examination.

15- Learned Amicus Curiae argued that the evidence of all the three victims of the case is in-consistent to the version of the F.I.R. and that it appear that they could not identify their assailants and the culprits and the appellant and others were subsequently named and falsely roped in in this case. All these three victims of the case were cross-examined at length but none of them have been suggested that appellant Manoj was not known to them from before the occurrence. The learned Amicus Curiae also submitted that appellant was nominated in the F.I.R. as one of the culprit on account of his having illicit relations with the daughter-in-law of the informant. To bring home this point of view attention was drawn to the facts that P.W.1 Smt. Manju has not received injuries on her back although she has alleged that she had been dragged forcibly by the appellant and other been into forest before committing rape on her. Absence of injuries on the back could not be taken to belie the evidence on this victim because “Ghashitana” (dragging) was alleged with reference to her being taken forcibly into the forest by the appellant and others. Smt. Manju was also suggested that she was having illicit relations with appellant and she went with him out of her own will and consent. She vehemently denied the suggestion and reiterated that she was subjected to forcible intercourse by the appellant. She further denied to her suggestion that she was not subjected to forcible rape by the appellant. As is evident from medical evidence she had sustained external injuries on her person and this support her version that she

was forced to submit to sexual intercourse against her wish by the appellant and another as stated by her.

16- The learned Amicus Curiae drew the attention to the fact that pathological report was negative in the sense that spermatozoa was not seen in her vaginal smear. Further no internal injury was detected on her private part. She is married lady and if no internal injury on the private part was found it would not indicate that alleged act of rape was not committed on her. Absence of spermatozoa make little difference because after the incident she had walked considerable distance on foot and semen may not have remained there in the vagina. At any rate her evidence repose full confidence and, therefore, the evidence was fit to be held credible and consistent with the prosecution version. I agree with the conclusion drawn by the learned Sessions Judge in regard to her evidence.

17- In regard to the evidence of P.W.4 Smt. Ganga learned Amicus Curiae submitted that her evidence is highly unnatural and discrepant because it could not be safely accepted that she was over-powered by the appellant and others out side the house where her mother was doing some work in the field. The argument stand rebutted by the fact that P.W.2 Smt. Chandrakali was made aware of some mischief and some happening on hearing the alarm raised by her daughter. It shows that she was not so close to the house as to have witnessed the actual act of the appellant and others overpowering her daughter Smt. Ganga and taking her inside the house after she came out with water demanded by them. Therefore, the evidence of Smt. Ganga admits of no inference of infirmity and there are no reasons to disbelieve her that her neck was tied by her Saree and ornaments and cash was removed by the culprits from the box kept inside the house. Nothing of significance came out of her cross-examination as may in any way discredit her testimony and, therefore, I have no hesitation in coming to the conclusion that the learned Sessions Judge rightly placed reliance in her evidence also.

18- Coming to the evidence of P.W.2 Smt. Chandrakali it need to be stated that she was also the witness of the sequence of events pertaining to the act of committing lurking hourse trespass to commit the robbery in the house of the informant. Her evidence is categorical and consistent that as soon as she was proceeding to the rescue of her daughter appellant Manoj intercepted her at a short distance out side the house and gave her blows of Pathal causing her

serious bleeding in injuries and she was prevented from reaching the house where the trespass was committed in order to commit the theft. As a result of injuries being sustained by her she fell unconscious till she was shifted to the hospital where she came into senses and told all about the incident. It is in her evidence that she had to remain under treatment for about three months which statement can not be disputed in view of seven serious injuries of sharp edged weapon sustained by her on various parts of the body including the head. Her piercing and lengthy cross examination also could not result in extracting any thing beneficial to the appellant and there was thus nothing as may detract from placing implicit reliance in her evidence also. Again, the only alternative available is to find favour with the inference drawn by the learned Sessions Judge in relation of her evidence also.

19- Pointing out to minor contradictions in the statement of informant P.w.3 Puran Bahadur it was argued that the prosecution version as set up does not appear probable. The inconsistency pointed out pertain to making provision of clothing to naked P.W.1 Smt Manju while she was returning to the house from the place of the incident where she was raped and also in regard to the time and place where he was given information of the occurrence by his daughter. These infirmities at, any, rate, are very minor and have no impact on the credibility of the evidence of the three victims who have fully supported the prosecution version and the allegations as have been made against the appellant.

20- The learned Amicus Curiae could not point out any unfairness in the investigation of the case and, therefore, the evidence of the two investigating officers require no discussion in my judgment.

21- In view of the evidence on record, the circumstances and the probabilities of the case I have no hesitation in recording my judgment that all the three victims of the case had given truthful version of the occurrence and the charges against the appellant were thus proved beyond doubt. The learned trial court has rightly held the appellant guilty of the offences punishable under sections 454, 397 and 376 of the Indian Penal Code. The sentences awarded are not severe and therefore no inference is also warranted in the approach adopted in this regard by the learned Sessions Judge. This appeal therefore is devoid of merit and is liable to be dismissed.

22- The appeal is dismissed. The judgment and order dated 1.11.2001 convicting the appellant Manoj and sentencing him as aforesaid under sections

454, 397 and 376 I.P.C. is upheld. The appellant is in jail. He shall, serve out the sentences, which as directed by the learned Sessions Judge, shall run concurrently.

23- Sri. N.C. Gupta learned Advocate, Amicus Curiae volunteered that the fee prescribed be remitted to the fund of the High Court Legal Aid Committee.

24. Let the record of the case be sent back to the learned Sessions Judge, Uttarkashi for necessary compliance.

(Irshad Hussain, J.)

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